

ORIGINAL

DOCKET FILE COPY ORIGINAL

ANN BAVENDER*
ANNE GOODWIN CRUMP
VINCENT J. CURTIS, JR.
PAUL J. FELDMAN
FRANK R. JAZZO
ANDREW S. KERSTING
EUGENE M. LAWSON, JR.
SUSAN A. MARSHALL*
HARRY C. MARTIN
RAYMOND J. QUIANZON
LEONARD R. RAISH
JAMES P. RILEY
ALISON J. SHAPIRO
KATHLEEN VICTORY
JENNIFER DINE WAGNER*
LILIANA E. WARD
HOWARD M. WEISS
ZHAO XIAOHUA*

* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ARLINGTON, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

www.fhh-telcomlaw.com

RETIRED MEMBERS
RICHARD HILDRETH
GEORGE PETRUTSAS
CONSULTANT FOR INTERNATIONAL AND
INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)
OF COUNSEL
EDWARD A. CAINE*
DONALD J. EVANS*
MITCHELL LAZARUS
EDWARD S. O'NEILL*
WRITER'S DIRECT

August 3, 2001

RECEIVED

AUG - 3 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: MM Docket No. 00-245
RM-9971
Alberta, Virginia, and Whitakers, North Carolina

Dear Ms. Salas:

Transmitted herewith, on behalf of Garysburg Radio, are an original and four copies of its "Reply Comments" in the above-referenced proceeding.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,



Anne Goodwin Crump
Counsel for Garysburg Radio

Enclosures

AGC:mah

No. of Copies rec'd 014
L11A BODE

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

AUG - 3 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM DOCKET NO. 00-245
Table of Allotments, FM Broadcast Stations.)	RM-9971
(Alberta, Virginia, and Whitakers, North Carolina)	

Directed to: Chief, Allocations Branch

REPLY COMMENTS

Garysburg Radio, by its attorneys, hereby respectfully submits its Reply Comments in the above-captioned proceeding, pursuant to the Commission's Public Notice dated July 19, 2001.

With respect thereto, the following is submitted:

1. The Commission initiated the instant proceeding with the release of its *Notice of Proposed Rule Making*, DA 00-2771, released December 8, 2000, ("*NPRM*"). Therein, the Commission proposed to amend Section 73.202(b) of its Rules, the Table of Allotments for FM Broadcast Stations, to substitute Channel 276C3 for Channel 276A at Alberta, Virginia, and to reallocate Channel 276C3 from Alberta to Whitakers, North Carolina, and that the authorization for WAQD(FM) be modified to reflect the new community of license. In response to the *NPRM*, Garysburg Radio submitted its "Comments and Counterproposal," proposing instead that Channel 299A be substituted for Channel 276A at Alberta, and that Channel 276A be allotted to Garysburg, North Carolina, as that community's first local aural transmission service. In addition, Dinwiddie Radio Company ("Dinwiddie Radio") submitted its "Comments and Counterproposal," in which it proposed that Channel 276A be retained at Alberta and that

Channel 299A be allotted to Dinwiddie, Virginia. Finally, MainQuad Broadcasting, Inc. (“MainQuad”), the successor-in-interest to the original rule making proponent, submitted its comments in support of the proposal outlined in the *NPRM*. Thereafter, MainQuad and Garysburg Radio each submitted Reply Comments in this proceeding on February 13, 2001.

2. In its “Comments and Counterproposal,” Garysburg Radio demonstrated that adoption of its counterproposal would better serve the public interest and the Commission’s FM allotment priorities as set forth in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C.2d 88 (1982) than would the proposal set forth in the *NPRM*. As Garysburg Radio has set forth in its Comments, Garysburg is a thriving community, with its own local government and businesses, and is in need of a local broadcast outlet. The businesses include four grocery stores, two convenience stores, and an assortment of other businesses including garages, auto sales, beauty salons, restaurants, a motel, and Agrijohn Homes. The community also is home to four churches.

3. In contrast, the community of Whitakers, to which MainQuad seeks to move, is located just outside of the Rocky Mount, North Carolina, urbanized area. As set forth in its Reply Comments, Garysburg Radio supports Dinwiddie Radio’s conclusion in its Comments that MainQuad should be required to submit a “*Tuck*” showing so that the Commission may consider the extent to which WAQD(FM) would be likely to provide service to the entire Rocky Mount Urbanized Area. *See, Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988); *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995).

4. Furthermore, MainQuad is seeking to remove the only licensed local broadcast transmission facility from the community of Alberta. With regard to local service at Alberta, while the *NPRM* noted that there would not be a loss of existing service since WAQD(FM) (now

with new call letters WSMY-FM) had not yet been constructed, that circumstance changed after release of the *NPRM*. The Commission's Consolidated Database System (CDBS) reflects that, on December 18, 2000, Mainquad filed its application for license to cover construction permit, File No. BLH-20001218AAE, stating that the station was operating pursuant to automatic program test authority. That application for license was granted on March 13, 2001. In its Comments filed January 29, 2001, however, MainQuad indicated that WAQD(FM) (now WSMY-FM) had already gone off the air due to alleged difficulties and complaints concerning interference to television Channel 12 in Richmond, Virginia. As set forth in Garysburg Radio's Reply Comments, however, it did not appear that MainQuad had taken any steps to resolve the interference issues before it took the drastic step of going off the air. The only rational explanation for such a seemingly irrational course of conduct appeared to be an attempt to manipulate the Commission's processes to improve its own standing in this proceeding.

5. A period of over six months has now elapsed since MainQuad filed its Comments indicating that the Alberta station was off the air. A review of CDBS as of this date, however, does not indicate that MainQuad ever sought or obtained Special Temporary Authority ("STA") to remain silent. Since Section 73.1740 of the Commission's Rules requires licensees to seek such authority for stations which remain silent for more than 30 days, the logical conclusion is that the Alberta station has resumed broadcast operations. Indeed, it would be entirely sensible, in light of the significant expenditures to construct a new station, for MainQuad to have resolved any interference issues and to have recommenced broadcast operations. Furthermore, in the interim, the call letters for the station have been changed from WAQD(FM) to WSMY-FM. As it would seem pointless to change the call letters of a dormant station, this activity also indicates that the station has resumed its operations. If so, then WSMY-FM is again providing an existing

service at Alberta, and the Commission has stated that it will be reluctant to remove the sole existing local service from a community. *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). Accordingly, MainQuad's request must be denied on this basis alone.

6. If WSMY-FM is not operating, then the question arises as to why MainQuad apparently has not sought an STA to remain silent. A number of possible explanations come to mind, including wishing to avoid delay in approval of the station's license or wishing to delay the Mass Media Bureau's recognition that the station must go back on the air within one year to avoid automatic expiration of its license as a matter of law. Either of these explanations smacks of procedural gamesmanship amounting to an abuse of the Commission's processes.¹ There are a number of other possible explanations for such conduct, but Garysburg Radio declines to speculate further as to which is the correct explanation if MainQuad has indeed failed to seek an STA to remain silent. All of these questions, however, point to the superior public interest benefits to be provided by Garysburg Radio's counterproposal.

¹ Other, similar attempts by MainQuad to manipulate the Commission's processes were set forth in Garysburg Radio's Reply Comments.

WHEREFORE, the premises considered, Garysburg Radio respectfully requests that the Commission adopt its counterproposal, substituting Channel 299A for Channel 276A at Alberta and allotting Channel 276A at Garysburg.

Respectfully submitted,

GARYSBURG RADIO

By:



Vincent J. Curtis, Jr.
Anne Goodwin Crump

Its Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street
Eleventh Floor
Arlington, Virginia 22209
(703) 812-0400

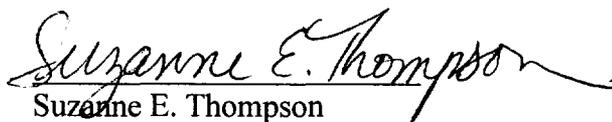
August 3, 2001

CERTIFICATE OF SERVICE

I, Suzanne E. Thompson, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C. do hereby certify that true copies of the foregoing "Reply Comments" were sent this 3rd day of August, 2001, by United States mail, postage prepaid, to the following:

John M. Pelkey, Esquire
Garvey, Schubert & Barer
5th Floor, 1000 Potomac Street, N.W.
Washington, D.C. 20007
Counsel for MainQuad Broadcasting, Inc.

Meredith S. Senter, Esquire
Leventhal, Senter & Lerman, P.L.L.C.
2000 K Street, N.W., Suite 600
Washington, D.C. 20006
Counsel for Dinwiddie Radio Company


Suzanne E. Thompson